

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RODNEY BROWN	§	
v.	§	CIVIL ACTION NO. 6:15cv298
JOHN RUPERT, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Rodney Brown, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

This lawsuit was severed out of a larger one. Brown was directed to file an amended complaint and to pay the filing fee or seek leave to proceed *in forma pauperis*, but he did not comply. The magistrate judge issued a report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court.

A copy of this report was sent to Brown at his last known address, return receipt requested, but no objections have been received; instead, Brown filed a motion asking to be dismissed as a plaintiff, stating that he had never filed a lawsuit. Brown explained that a prisoner named Freddie Fountain asked Brown and other inmates to be witnesses for him on a number of issues. Brown and the other inmates agreed to do so, but when they saw that Fountain's complaint did not contain any of the issues which Fountain had spoken of, they told Fountain they would not be witnesses for him.

The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined that this Report is correct. Nonetheless, Brown's request for voluntary dismissal should

be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977) (plaintiff has absolute right to dismiss his complaint under Rule 41(a), Fed. R. Civ. P., prior to the filing of an answer or motion for summary judgment); *Thomas v. Phillips*, 83 F.App'x 661, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*). It is accordingly

ORDERED that the Plaintiff's request for voluntary dismissal of his civil action (docket no. 5) is **GRANTED**. It is further

ORDERED that the above-styled civil action is **DISMISSED** without prejudice on the request of the Plaintiff. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

SIGNED this 12th day of November, 2015.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE